

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DYFAN LLC,

Plaintiff,

v.

TARGET CORPORATION,

Defendant.

C.A. No. 6:19-cv-00179-ADA

JURY TRIAL DEMANDED

JOINT STIPULATION OF DISMISSAL AND FINAL JUDGMENT

Plaintiff Dyfan LLC (“Dyfan”) and Defendant Target Corporation (“Target”; collectively with Dyfan, the “Parties”), by and through their undersigned counsel, subject to the approval of the Court, hereby stipulate and agree as follows:

1. This is a patent infringement action brought by Dyfan against Target.
2. This Court has jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338.
3. The patents in suit in this action are U.S. Patent Nos. 9,973,899 (the “’899 patent”) and 10,194,292 (the “’292 patent”; collectively with the ’899 patent, the “patents in suit”). Dyfan claims to be the owner by assignment of the patents in suit.
4. In this action, Dyfan has asserted claims 1-4, 7, 9, 11-19 and 23-30 of the ’899 patent and claims 1-8, 10-21 and 24-30 of the ’292 patent. No other claims have been asserted.
5. On December 11, 2019, the Parties submitted a Joint Claim Construction Statement (Dkt. No. 46), providing a list of disputed terms for construction. That list included thirty terms, twenty-five of which were potentially subject to § 112, ¶ 6.
6. The Court held the *Markman* hearing on December 19, 2019.

7. On November 24, 2020, the Court entered a Claim Construction Order (Dkt. No. 57), which found, in relevant part, that the twenty-five disputed terms are subject to § 112, ¶ 6 and are indefinite for lack of corresponding structure.

8. Under this Court's claim construction, Dyfan cannot prevail on the issue of infringement because Dyfan cannot prove that the Accused Systems read on a valid, asserted claim of the patents in suit, namely any of claims 1-4, 7, 9, 11-19 and 23-30 of the '899 patent and claims 1-8, 10-21 and 24-30 of the '292 patent.

9. The Parties therefore stipulate and agree to entry of this Final Judgment in favor of Target and against Dyfan that the asserted claims of the patents in suit are invalid under 35 U.S.C. § 112 ¶ 2 for the reasons set forth in the Court's Claim Construction Order (Dkt. No. 57), for purposes of allowing appeal of the foregoing order.

10. The Parties further stipulate and agree that Target's unadjudicated affirmative defenses of invalidity under 35 U.S.C. § 41, 101, 102, 103, 112 ¶ 1, 116 and/or 282, limitation of damages, prosecution history estoppel, and cost preclusion are dismissed without prejudice in view of the Court's claim construction, and without prejudice to reassert the foregoing affirmative defenses in the event of remand or other assertions by Dyfan under the patents in suit. For the sake of clarity, this dismissal is not intended to dismiss any post judgment claim(s) or motion(s) relating to an "exceptional case" determination, pursuant to 35 U.S.C. § 285, or other bases for the award of attorneys' fees and/or costs, the timing of which is governed by Fed. R. Civ. P. 54(d)(1) and (2))

11. This Stipulated Order of Dismissal and Final Judgment is without prejudice to the Parties' rights to appeal any future orders issued by the Court.

SO STIPULATED BY the Parties through their undersigned counsel:

Dated: January 29, 2021

Respectfully submitted,

/s/ Timothy Devlin

Timothy Devlin (*pro hac vice*)

Derek Dahlgren (*pro hac vice*)

Nadiia Loizides (*pro hac vice*)

DEVLIN LAW FIRM LLC

1526 Gilpin Avenue

Wilmington, DE 19806

Tel.: (302) 449-9010

tdevlin@devlinlawfirm.com

ddahlgren@devlinlawfirm.com

nloizides@devlinlawfirm.com

Attorneys for Plaintiff Dyfan LLC

/s/ Gilbert Greene

Gilbert A. Greene

DUANE MORRIS LLP

Las Cimas IV

900 S. Capital of Texas Highway, Suite 300

Austin, TX 78746

Tel.: 512-277-2246

Fax: 512-597-0703

Email: BGreene@duanemorris.com

Matthew S. Yungwirth (*pro hac vice*)

DUANE MORRIS LLP

1075 Peachtree Street NE, Suite 2000

Atlanta, GA 30309-3929

Tel.: 404-253-6900

Email: msyungwirth@duanemorris.com

Christopher J. Tyson (*pro hac vice*)

DUANE MORRIS LLP

505 9th Street N.W., Suite 1000

Washington, DC 20004-2166

Tel.: 202.776.5213

Email: cjtyson@duanemorris.com

Daniel M. Lechleiter

Faegre Baker Daniels LLP

300 North Meridian Street, Suite 2700

Indianapolis, IN 46204-1750

Tel.: (317) 237-1070

Fax: (317) 237-1000

Email: daniel.lechleiter@faegrebd.com

Lauren M.W. Steinhäuser (*pro hac vice*)

Faegre Baker Daniels LLP

90 S. Seventh St., Suite 2200

Minneapolis, MN 55402

Tel.: 630-766-6879

Fax: 612-766-1600

Email: lauren.steinhäuser@faegrebd.com

Attorneys for Defendant Target Corporation

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **JOINT STIPULATION** was served on all counsel of record via the Court's CM/ECF system on January 29, 2021.

/s/ Timothy Devlin
Timothy Devlin